

Message

From: Hicks, Matt [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EAA50F546C9B440A98C82F4E9BD5BD69-HICKS, MATTHEW]
Sent: 4/28/2020 12:45:33 PM
To: Palmer, Leif [Palmer.Leif@epa.gov]
Subject: FW: DF_Draft FR notice re assumption and ESA DF Review.docx
Attachments: DF_Draft FR notice re assumption and ESA DF Review.docx

Following up on our conversation yesterday, the white paper is described in the draft FR notice as FDEP's white paper without any attribution to the law firm or lawyers that drafted it (see discussion starting on page 8). The white paper is referenced repeated throughout the notice and will be part to the docket for the action and therefore viewable by anyone who wants to take a look.

From: Hicks, Matt
Sent: Wednesday, April 22, 2020 4:59 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: FW: DF_Draft FR notice re assumption and ESA DF Review.docx

Leif,

For your awareness, it looks like OW will soon be rolling out with their Fed Reg notice on whether EPA should change its position on the availability of ESA Section 7 consultation for 404 assumption approvals. OW and OGC have asked Region 4 to confirm with FDEP that they are comfortable with us citing the white paper in the F.R. notice. Tom has reached out to Jeananne to see who at Region 4 should contact FDEP but I haven't heard anything yet. It seems like the most efficient way to get a quick answer is a Mary to Noah or Jeananne to John Truitt call rather than from staff up and back down. Simma has stressed that they need this asap.

Ex. 5 AC/DP

Thanks,

Matt

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Wednesday, April 22, 2020 10:57 AM
To: McGill, Thomas <McGill.Thomas@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Cc: Wade, Alexis <Wade.Alexis@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Subject: RE: DF_Draft FR notice re assumption and ESA DF Review.docx

Agree. And fast, if possible.

(Sorry; I know this has been sitting for 6 months...)

Simma Kupchan

EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: McGill, Thomas <McGill.Thomas@epa.gov>
Sent: Wednesday, April 22, 2020 10:53 AM
To: Hicks, Matt <Hicks.Matthew@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Cc: Wade, Alexis <Wade.Alexis@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Subject: RE: DF_Draft FR notice re assumption and ESA DF Review.docx

I forwarded the question to Jeaneanne and asked for her input. I'm assuming this needs to be communication with senior leadership with FDEP, perhaps from Mary Walker or David Ross.

From: Hicks, Matt <Hicks.Matthew@epa.gov>
Sent: Wednesday, April 22, 2020 10:45 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Cc: Wade, Alexis <Wade.Alexis@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
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Thanks Simma. I've reached out to Tom to see at what level that outreach to FDEP should occur. We'll let you know once we've had an opportunity to talk to FDEP.

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Wednesday, April 22, 2020 9:33 AM
To: Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Cc: Wade, Alexis <Wade.Alexis@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
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FYI. Can the Region confirm with FDEP that they are comfortable with our citing the white paper?

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Sent: Wednesday, April 22, 2020 9:09 AM
To: Wade, Alexis <Wade.Alexis@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: FW: DF_Draft FR notice re assumption and ESA DF Review.docx

FYI - I've not even opened this.

From: Goodin, John <Goodin.John@epa.gov>
Sent: Wednesday, April 22, 2020 9:06 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>

Cc: Frazer, Brian <Frazer.Brian@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Subject: RE: DF_Draft FR notice re assumption and ESA DF Review.docx

Here you go—thanks!

From: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Sent: Wednesday, April 22, 2020 9:04 AM

To: Goodin, John <Goodin.John@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>

Cc: Frazer, Brian <Frazer.Brian@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Subject: RE: DF_Draft FR notice re assumption and ESA DF Review.docx

Thanks John. Can you forward the attachment?

Mindy Eisenberg
Associate Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4504T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Goodin, John <Goodin.John@epa.gov>

Sent: Wednesday, April 22, 2020 8:34 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>

Cc: Frazer, Brian <Frazer.Brian@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

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DELIBERATIVE

Folks—we can move forward as Dave notes below. Would you coordinate with OGC and the Region on Dave's several asks? I'll acknowledge we'll do that when I open with Dave at our 1015a.

Thanks!

John

From: Ross, David P <ross.davidp@epa.gov>

Sent: Wednesday, April 22, 2020 8:23 AM

To: Goodin, John <Goodin.John@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>

Cc: Aguirre, Janita <Aguirre.Janita@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

Subject: RE: DF_Draft FR notice re assumption and ESA DF Review.docx

Ex. 5 AC/DP

Regards,

Dave

From: Ross, David P

Sent: Wednesday, April 22, 2020 7:21 AM

To: Goodin, John <Goodin.John@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>

Cc: Aguirre, Janita <Aguirre.Janita@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

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Confidential; Deliberative; Attorney-Client Communication

John and David,

Nice job to the team on this. Please move forward to FR publication. I've attached a few edits, but please have Macara's shop to the FRN scrub as well. I assume the team has confirmed with FDEP that they are good with putting their white paper in the docket, but please confirm.

Also, thanks for the update email on 4/9. Two things in there. When the team receives the draft BA, please talk to me and Mary before we initiate the deep dive review. I have been spending time getting briefed by Interior/FWS on their process

Ex. 5 AC/DP

Of the issues raised in your email, I'd like to discuss

Ex. 5 Deliberative Process (DP)

Thanks.

Dave